Central Law Journal.

ST. LOUIS, MO., FEBRUARY 4, 1921

THE CONFERENCE OF BAR ASSOCIATION DELEGATES—WHAT IT IS AND WHAT IT IS DOING.

The Conference of Bar Association Delegates, which became in August, 1920, a Section of the American Bar Association, had its beginning in 1916, at Chicago. There was announced, on the program of the American Bar Association in connection with its annual meeting of that year, a special conference of representatives of the American Bar Association and delegates from the various state and local bar associations in the United States, "to consider what, if any, steps may be expediently taken to bring about closer relationship, official or otherwise, between the American Bar Association and such other associations." Invitations to the Conference were extended by the American Bar Association over the signature of its President, Hon. Elihu Root, who himself opened the Conference. As a result of the gathering, at which were present such men as Hon. William Howard Taft, Hon. Simeon E. Baldwin of Connecticut, who was its chairman; Hon. George T. Page of Peoria, Illinois; Hon. Nathan William MacChesney of Chicago, Edward F. Trabue of Kentucky, and Edwin M. Abbott of Philadelphia, a motion was made to report to the Executive Committee of the American Bar Association that in the judgment of the Conference it would be wise to organize an annual conference of delegates from the local and state bar associations to be held in connection with the American Bar Association.

The Committee on Co-operation among bar associations of the American Bar Association, together with the presidents of five state bar associations, acted as the Committee on Arrangements for the 1917 meeting of the Conference, at which the Conference was formally organized. The entire Constitution of the Conference, adopted at its meeting in Saratoga Springs, on September 3, 1917, was contained in the following:

"Resolved, That this Conference be continued; that to that end a provisional organization be formed; that a chairman, vice-chairman and a secretary be elected; that a Committee on Arrangements of the American Bar Association be requested to prepare for next year a suitable program and recommendations for co-operation; and that there be eligible to membership in the Conference three delegates from each state bar association, two delegates from each local bar association and five delegates from the American Bar Association."

This meeting was noteworthy not only because it marked the formal organization of the Conference and the election of Hon. Elihu Root as its chairman, but also because of the timeliness of the subjects discussed and the eminence of the speakers. Carl L. Schurz of New York opened the discussion on "Legal Aid by the Profession to Those Who Need It Most;" Roscoe Pound, Dean of the Harvard Law School, addressed the Conference on "The Abolition of Anachronisms in the Law," and a most valuable discussion of the standards of the profession was participated in by men from New York, Massachusetts, Minnesota, Colorado, Alabama and other states.

At Cleveland, in 1918, a large part of the attention of the Conference was given to a discussion of the war service of the Bar. Commercial Arbitration was discussed in two addresses, one by a lawyer and the other by a layman, the latter the Chairman of the Committee on Arbitration of the Chamber of Commerce of the State of New York. Charles A. Boston of New York spoke on the Contingent Fee. The resolutions adopted at the Cleveland meeting, together with copies of the two addresses on Commercial Arbitration, were sent to all bar associations throughout the country.

Forty-two states were represented at the 1919 meeting in Boston and there were present one hundred and fifty delegates. By this time a real relationship had been established between the Conference and many hundreds of associations throughout the country, so that frequent requests for advice and aid, reports of action along the line of the work of the Conference, and evidences of real co-operation were received by the Secretary's office. The discussion at Boston on The Relation of the Trust Company to the Practice of the Law and on The Proposal of the American Judicature Society for the Incorporation of the Bar in the several states laid the foundation for the two important reports presented to the 1920 meeting. W. H. H. Piatt of Kansas City, as chairman of a special committee, laid before the Conference at St. Louis a report on What Constitutes Practice of the Law and What Constitutes Unlawful and Improper Practice of the Law by Laymen or Lay Agencies. Hon. Clarence N. Goodwin of Chicago, for the special committee of which he was chairman, presented a report on State Bar Organization.

The action of the Conference on the subject of "Commercial Arbitration," carried forward by the New York State Bar Association on the recommendation of the Conference, resulted (in co-operation with the New York Chamber of Commerce and other commercial bodies) in the passage of the New York "Arbitration Law" (Chapter 275, Laws 1920).

The Conference, by its action at St. Louis in 1920, has now become a Section of the American Bar Association, with Stiles W. Burr of St. Paul as its Chairman; Clarence N. Goodwin, Vice-Chairman; Nathan W. MacChesney, Treasurer, and Julius Henry Cohen, Secretary, and has adopted a constitution approved by the American Bar Association. It now has a governing council consisting of Elihu Root, New York; Moorfield Storey, Boston; Charles A. Boston, New York; Thomas J. O'Donnell, Denver; Thomas W. Shelton, Norfolk; William H. H. Piatt, Kansas City; William V. Rooker, Indianapolis; William J. Fitzgerald, Scranton, and the officers. The closer affiliation of the Conference with the American Bar Association will, it is believed, make for the greater usefulness of the Conference, which, through its meetings, its reports and its publications, has now become a real factor in the work of some eight hundred bar associations throughout the country, and in educating both the Bar and the public in matters of vital concern.

NOTES OF IMPORTANT DECISIONS.

CONTRIBUTORY NEGLIGENCE OF INVITED GUEST IN AUTOMOBILE.—One who invites another to ride with him in his automobile is liable, according to the weight of authority, for his negligence in operating the car resulting in injury to his guest. Our particular inquiry at this time, however, is whether the failure of the guest to protest against the speed of the car or to warn the driver against possible dangers constitutes contributory negligence on the part of the guest? We are frank to say that we do not think that this should be regarded as sufficient to constitute contributory negligence when the suit is against the automobile driver himself and not against a third party. But a recent Wisconsin case expresses a different opinion and holds that where plaintiff, an invited guest of defendant in the latter's automobile, failed to protest against the speed of the car and to warn the driver of an approaching intersection of the road with the track of a railroad company, he was guilty of negligence that contributed to his injury when the automobile collided with a train of freight cars. Howe v. Corey, 179 N. W. 791. In its opinion the Court justified its position in the following language:

> The facts, circumstances, and conditions thus disclosed and the other evidence in the case show without dispute that the plaintiff to all intents and purposes acquiesced in the manner the car was being driven by Corey, and that he did nothing to protect himself from the imminent dangers in approaching the Soo tracks crossing in the manner they did, and of which he was as fully apprised as Corey, nor did he do anything to ascertain whether or not Corey was keeping a lookout for these dangers. To permit

Corey to proceed in this reckless manner without remonstrance in the light of plaintiff's knowledge of the probable dangers at the Soo crossing amounts to acquiescence in Corey's conduct and an assumption of the hazards and dangers incident thereto. It is wholly inconsistent with the idea that he exercised such reasonable care as the ordinarily prudent persons exercise under like or similar circumstances. There is but one inference permissible to be drawn from the facts shown by the evidence, namely, that plaintiff was guilty of a want of ordinary care on the occasion in question, and that such want of care contributed to produce the injury complained of. Fair v. Union Traction Co., 102 Kan. 611, 171 Pac. 649; Jefson v. Crosston St. Ry. Co., 72 Misc. Rep. 103, 129 N. Y. Supp. 233."

We believe the Court makes the mistake of applying to this case (a suit against the driver himself) the same rule that is applied where the guest brings his actions against the third party causing the injury. In such cases it is proper that the guest should be held responsible for the negligence of his host unless he, in some manner, protested against the driver's method of handling the car in order to show that he was not a party to the driver's conduct nor in any manner encouraged it. This rule is well stated in Huddy on Automobiles, § 690, as follows:

"In general, the primary duty of caring for the safety of the vehicle and its passengers rests upon the driver, and a mere gratuitous passenger should not be found guilty of contributory negligence as a matter of law, unless he in some way actively participates in the negligence of the driver, or is aware either that the driver is incompetent or careless, or unmindful of some danger known to or apparent to the passenger, or that the driver is not taking proper care or precautions in approaching a place of danger, and, being so aware, fails to warn or admonish the driver, or to take the proper steps to preserve his own safety." Carnegie v. G. N. R. Co., 128 Minn. 14, 150 N. W. 164.

But this rule has no application to a case where the host is being sued by the guest. The driver certainly ought not to be heard to excuse his own negligence by pleading the plaintiff's failure to protest against the speed of the car or to warn him of approaching dangers. There is no reason to impute the driver's negligence to the guest where the guest is suing the driver and the latter should not escape liability because of the guest's implicit confidence in his host.

THE MUNICIPAL COURT OF CHICAGO — ITS ORGANIZATION AND ADMINISTRATION.*

The decade just closing has seen great changes in social and commercial life and has produced new problems, as well as intensifying the old problems, which the courts are called upon to solve. There would be reason for despair were it not for the fact that our experience has grown proportionately.

In many respects the administration of justice must stand or fall in accordance with its success or failure in our great centers of population. There is less need now than formerly for the warning that we have no right to expect success in this or any other field of government as a matter of course, because we are divinely appointed people who will not suffer for their blunders and their omissions. Our people, in fact, realize the need for exerting themselves to preserve intact the liberties and the safeguards established by the fathers, and to bulwark them against the inevitable forces of dissolution which threaten in every generation.

The Municipal Court of Chicago was established in 1906 as the first step in an attempt to secure for the City of Chicago a new charter for a larger measure of self-government. The only charter provision secured was that relating to the organization of this court and the abolition of the justices of the peace and constables. The justices of the peace and constables came to Chicago, as they came to the rest of the country, with our adoption of the English system of jurisprudence in minor cases. Indeed, in antiquity the office of constable vies with that of king. The historian Fiske tells us that the office of justice of the peace was created during the reign of Edward III to put a stop to brigandage in the coun-

*A discussion of the interesting Psychopathic Laboratory attached to this Court will appear in next week's issue of the Journal.

try districts of England. As a *reversal*, it was abolished in Chicago to end the brigandage of the justices.

The justices of the peace and constables, as officials for the disposition of minor cases came West from the New England States with the New England township government, and from Virginia through the Southern States with the county system of government. Hence Northern Illinois has these officials, because it adopted the township government of New England, and Southern Illinois has them because it adopted the county government of Virginia. This system of jurisprudence in the minor cases has broken down in every big American city and city courts are rapidly being established in their stead, of which our court was among the first, and is being accepted as a model, so far as its organization is concerned, in the United States.

The scheme of isolated court districts, each independent of the other, common to all of our states, for the trial of more important litigation was devised during the early history of the country to minister to sparsely settled communities. With the growth of all of our states in wealth and population, with the increased facility for cheap and rapid communication, with the better knowledge of the problems of social legislation, sanitation, housing, hazardous occupations, human welfare, crime, etc., there has come upon the courts new burdens, the weight of which was especially felt in the cities, with the result that in the matter of reorganization city courts have been the first to receive consideration.

A city court must deal with a great volume of civil litigation. It must enforce numerous police regulations made necessary by the conditions of city life; it must enforce criminal law where crime flourishes. To do this effectively numerous tribunals must be established to meet the need. These must be organized in order to avoid the waste of judicial power, save time, promote efficiency of administration, and economy of expenditures.

Personnel of the Court—The Court consists of an executive officer, known as the Chief Justice, and thirty Associate Judges. Besides the staff of Associate Judges, the court has the power to call in from the state additional judges, who assist as the volume of business may require, and three to five state judges are constantly engaged in the court. It has a Chief Clerk and 184 deputy clerks; a Chief Bailiff and 161 deputy bailiffs. The Sheriff of Cook County and 222 deputies are officers of the court, and serve process outside the city limits. The Chief of Police and 5,000 officers in the city are ex-officio deputy bailiffs of the court. The Chief Probation officers and twenty deputies are officers of the court. The director of the Psychopathic Laboratory and three assistants and a certified public accountant complete the staff.

The Associate Judges are obliged to meet once a month for the consideration of such matters pertaining to the administration of justice in the court as may be brought before them. At such meetings they shall receive and investigate, or cause to be investigated, all complaints presented to them pertaining to the court and to the officers thereof, and shall take such steps as they may deem necessary or proper with respect thereto.

The judges are elected by the people of the city for terms of six years.

Jurisdiction—The court was originally given very extensive jurisdiction, which was divided into two classes, direct and indirect. The direct jurisdiction embraces cases that involve suits for money in any sum covering practically all commercial business, except chancery.

Its original criminal jurisdiction was limited to cases punishable by fine or imprisonment other than in the penitentiary. It was given jurisdiction of felony cases for preliminary hearing.

The indirect jurisdiction embraced any case, criminal or civil, that might be transferred to it from the state courts, and the law provided that cases could be trans-

ferred to the Municipal Court from the other courts, if the judges of such courts consented, upon the request of the plaintiff or defendant, and if both parties so stipulated, without consent of the state courts. This indirect jurisdiction has since been held unconstitutional, and, as a consequence, this court, which was intended to be a great criminal tribunal has become instead a great civil court, the largest in the United States in volume of business. The judges of the Municipal Court dispose of three-fourths of the commercial litigation of Cook County, in which Chicago is situated. They dispose of four-fifths of the criminal and quasi-criminal business of Cook County. The aggregate judgments of this court for one year exceed the aggregate judgments of all the other courts of Cook County combined for a period of three years, and exceed the judgments of all the other courts of Illinois combined in one year.

Powers of the Court—The committee which framed the original court act, was composed of several business men of large affairs, as well as several experienced lawyers and judges, and their influence appears in the law creating the court. These business men placed upon the judges the responsibility for administration of justice just as responsibility for a corporation is placed upon the board of directors, and they gave it an executive officer, just as a large private corporation might have, and placed upon him large responsibilities. This is the fundamental idea in the court's organization. It thus has large powers to govern itself. The court may, for example, vote the number and salaries of its clerks and bailiffs. It may discharge them with or without cause. It has power to supply its own needs by merely voting an appropriation. It is, therefore, a tax-levying body. This was done to make it independent of the Mayor, the City Council, or the Legislature in the matter of securing whatever it needed in the course of administration. The law provides that should the city fail to provide adequate quarters, the court may itself secure such quarters and the city is bound to supply them.

The court was given unusual powers to create its own rules of procedure. Other courts in the United States must go to the legislature for procedure, and such bodies are usually made up of grocers, butchers, farmers, etc., as well as lawyers. A majority of such a body may not think that judges and lawyers need what they request from the legislature. The advantage of having the power to create rules of procedure in the court itself enables the judges and the lawyers practicing in the court to confer together upon their needs, and to secure them through the court's passing a rule. Thus experiments may be made, and if not satisfactory, can be abandoned, as the court sees fit.

The Chief Justice is given special powers not generally held by judges. He is superintendent of the business of the court and, therefore, has supervision of the Clerks' and Bailiffs' offices. He is given power to assign judges to the various branch courts, both civil and criminal, as he sees fit, for as long or short a period as he sees fit. He is given the superintendency and control of the court calendars. He is given the superintendency and control of the summoning, examining, and assigning of jurors. He is authorized to employ certified public accountants, who work under him and render to him monthly and annual reports of the court's finances. The idea of financial supervision grew out of the circumstances that clerks of the state courts had embezzled large sums of money without any of the judges of the court knowing about the matter. It will thus be seen, that the Chief Justice has, in addition to the powers of the other judges of the court, other powers not usual in American courts.

The personnel of the entire police department of the city was placed under control of the court as ex-officio bailiffs. The court is authorized to pass rules governing the conduct of police officers in making arrests and in the taking of bail, and

when so acting the police officers become deputy bailiffs of the Municipal Court and subject to its rules and regulations.

Under the power of the judges to discipline the clerks and bailiffs, several such officials have been removed by order of the court, most conspicuous of which was a chief deputy bailiff for irregularities in office.

The court had occasion also to threaten to discipline a Chief of Police, who undertook to refuse to serve the court's process for certain gambling instruments on the theory that he did not believe they were gambling instruments. He was given the alternative of serving the court's process in one hour or of going to the county jail for a period of six months. He served the process.

The court also has had occasion to discipline one of its own judges. According to the findings of a committee of the judges appointed to investigate his judicial acts he had imprisoned persons in the county jail without bail and had in the first instance tried offenders and found them guilty and at a subsequent date changed this finding and found them not guilty of the same charge and in the same case, he had found defendants guilty upon trial, and at subsequent dates had sentenced them a second, and, in some instances, a third time, to pay higher fines on the same complaint and in the same case. He assumed in addition to his judicial power the power of the legislature to make new laws, the power of the executive to pardon offenders, to grant reprieves and to commute sentences of those guilty of violations of the law.

His discipline consisted in a recommendation by the judges of the court that he be removed from the trial of criminal cases altogether, and the Chief Justice had the power and did so remove him. Upon his removal to the civil calendar, he came in to see me one day, and said that he proposed to conduct the civil calendar as he pleased even though it might not please the other judges. Our office overlooked an open space on the Lake Front, on which stood a small shed, and motioning to it I said that if he did not try civil cases properly, I had the power to create a court district fifty feet square around the shed; that I would place him there with a clerk and bailiff, assign him nothing to try, and tell the Chicago public that it was cheap at that. I believe this instance to be the first in the United States of the discipline of a judge of a court, by the members of that court, under the law.

The power to so discipline a judge is an important one, and is very effective in holding the judges to a high standard of conduct in office. Judges occasionally are subject to criticism for acts, which, while they do not warrant impeachment, should not be overlooked. Another judge has been censured, and others have been criticised at judges' meetings. The opinion of the abler and more high-minded members holds the weaker ones in line and is most important in keeping uppermost in their minds fidelity to their oath of office.

The meetings of the judges are important also in that they place the whole court behind a judge who may have a disagreeable duty to perform and supports him in the performance thereof.

Growth and Development of the Court—Under the power to make its own rules, the court three months after its establishment adopted a simplified system of pleadings, the principal theory of which is that every pleading shall contain a concise statement of the ultimate facts on which the party pleading relies for his claim or defense, as the case may be, but not the evidence by which they are to be proved.

Every allegation of fact in any pleading, except allegations of unliquidated damages, if not denied specifically or by necessary implication in the pleading of the opposite party shall be taken to be admitted. In short, it is practically a system of pleading in accordance with that in use in the High Court of Justice in England.

The Chicago Municipal Court was the first in the United States to make use of this system of pleading, and it has resulted in the disposition of a great volume of business without anything more than the administrative act of the court.

Specialization of Courts—Under the powers which the Chief Justice has to assign judges, control calendars and to create branch courts by merely signing an order, we have been able to specialize the business of the court, both on the civil and the criminal side. The result is that we have created numerous special branches as follows:

Motion Branch—Cases involving more than $1,000.

Motion Branch—Cases involving less than $1,000, and citations after judgment.

Forcible Detainer and Distress for Rent Branch.

Three Small Claims Branches, in which suits in sums of $200 or less are litigated summarily, and sometimes without counsel.

A Branch where attachments, garnishments and replevin suits are heard.

Two or more branches for the trial of non-jury cases above $200.

Nine Branches for the trial of jury cases.

On the criminal side the business has been divided as follows:

The Court of Domestic Relations, a branch in which are tried all cases involving troubles between husbands and wives, wife desertion, neglect of children, etc.

The Morals Court, a branch in which are heard cases involving public morals, prostitution, etc.

The Boys' Court, a branch in which are heard all criminal and quasi-criminal charges against boys between the ages of 17 and 21 years. Under 17, the boys are brought into the Juvenile Court, not connected with the Municipal Court.

Automobile Court, a branch in which are tried all cases involving traffic regulations, speeding, etc.

One or more criminal jury branches.

Eleven branch criminal courts, in which preliminary hearings in felony charges and cases of misdemeanors punishable otherwise than in the penitentiary, and quasi-criminal cases involving the violation of city ordinances, are tried.

Some of these courts deserve special mention. The judge who sits in the motion court in first-class cases hears the greatest variety and the most important civil litigation in the City of Chicago, and it is, perhaps, the most difficult judgeship in the city in view of the volume of business, the intricate questions, and the amounts involved.

The branch court having charge of citations after judgment renders the court more efficient service than any of the state courts, in that a judgment debtor can be examined for the purpose of disclosing assets, a very efficacious procedure, and one which renders a judgment in the Municipal Court more effective than in any of the state courts.

Suits in attachment, garnishment and replevin are largely based upon statutory enactments and the fact that one judge tries all these cases enables him to become expert in the business, as, indeed, is true in all the branches. Having but one class of cases to try week in and week out for months and years at a time, judges become expert in their lines as they are educated by the entire Bar in the particular class of business before them.

Court of Domestic Relations—The Court of Domestic Relations deserves more than passing mention. Behind the court is a great system of social machinery, including all the churches of the city, Protestant, Catholic, and Jewish, with all their social workers; the Legal Aid Society; the United Charities; scores of hospitals; the Health Department of the city; the educational department of the schools; nineteen day nurseries; the lodges of the city; the foreign societies, Bohemian, Italian, Polish, etc. The judge of this branch court is in touch with all this machinery, and can set it in motion in aid of any person whose distress has come to his attention through a case tried in the court.

With such machinery available to the court, the judge is merely the first factor who sets it in operation. Through these

organizations the court can aid financially, can secure hospital treatment, work, and any aid that is required.

A judge who hears all the domestic troubles in a city of nearly three millions day after day, week after week, and month after month certainly becomes informed as to the controlling causes which bring such cases into the court.

This court collects annually for neglected and dependent children over $200,000.00 through its own officers, and compels the payment of a like sum directly without the same being entered in the court's files. The effect of the court's existence has been a deterrent, and the wife in Chicago whose husband does not support her has only to threaten to bring him to the Court of Domestic Relations to bring him to his senses.

The Social Secretary of the court, when complaints are brought in, writes to the prospective defendant before the court issues process. Thousands of adjustments are made without court action and without publicity. Any sensitive man prefers to keep his family troubles from the public and is quick to adopt the suggestions of the Social Service Agency. Such agency's ability to adjust matters is all the greater because it is known that next door sits a judge who has the power to bring about compulsion where there is no willingness to perform.

Lord Northcliffe, who sat for a day in the Domestic Relations Court, said of it:

"Of the many manifestations of modernity we have encountered in this most progressive of cities, nothing has excited the admiration of the widely traveled English folk who are accompanying me more than your Court of Domestic Relations. This is one of the most unique and useful courts I have found in any country. I hope it will be brought to London."

The Court of Domestic Relations furnishes a large quota for the Psychopathic Laboratory. Mental deficiency is at the bottom of a high percentage of the difficulties which bring the people to this court. Outspoken delusions of infidelity are very common; alcoholism, dementia praecox, psychopathic constitution, and feeblemindedness are found to be very prevalent in this court.

I will discuss in greater detail the findings of the laboratory in an article in next week's issue of the Journal.

Boys' Court—All criminal and quasi-criminal charges against boys between 17 and 21 years of age are tried in the so-called Boys' Court. There was the same reason for segregating these cases in one branch as those in the Court of Domestic Relations. It brought all boys to one place where causes of juvenile delinquency could be studied from every angle, and especially so that any with suspected physical or mental ailments could be sent to the Psychopathic Laboratory adjacent, and the court have the benefit of the director's testimony regarding their mental status.

This branch court disposes of about 10,000 criminal and quasi-criminal cases annually. Records on recidivism are kept. These reports show that practically all the boys mentally defective who have been in the juvenile court eventually get into this court and later to the Criminal Court.

The fact that most criminals begin their careers in their earlier years and are not indefinitely scattered over different ages is a significant one. In the first place, it shows the boy's tendency to conflict with environment from the beginning and that it continues when he is called upon in the struggle of life to test out his strength and weakness on his environment, and when he fails, we have what Dr. Hickson calls the "World Test," which is, after all, the most significant of all tests.

The World Test confirms the findings of the laboratory in regard to the underlying defectiveness so often appearing in these cases, and shows clearly why efforts to reform through homes, special schools, and probation have failed.

The Boys' Court more than any of the other specialized branches deals with fun-

damental crimes, such as burglary, larceny, holdups, homicide, etc. In view of the vast population of the city, now nearly three millions, and in view of the fact that this court also gets a certain quota from the smaller communities who tend to congregate in the large cities where detection is difficult, this court furnishes perhaps the greatest opportunity for the intensive study of crime that could be found. Here the boys are studied mentally, including their physiology, psychology, anthropology, such as stigmata of degeneration, nationality, etc., and anthropometrically, such as stature, weight, and other measurements; educationally, through school records, truancy, subnormal classes, grade, etc., and economically, because the period within the ages covered by the Boys' Court is a critical one economically. It is during these years that the boy must find himself and begin to assume responsibility. He is expected to assist in his own support and, therefore, must measure his ability with the world. Here recidivism can be studied, and we find as the basis of this status incurable hereditary constitutional defectiveness.

In connection with the Boys' Court are numerous social agencies, such as the Juvenile Protective Association, the Adult Probation Department, the Big Brother Movement, principally supported by the Order of Elks and the Catholic Big Brothers' Movement, the Protestant Association Service Agencies, and the Jewish Bureau of Personal Service. In fact, it has practically the same machinery behind it as the Court of Domestic Relations.

Morals Court—The Morals Court was established at the request of the famous Chicago Vice Commission, which recommended such a court in order to put pressure on the city authorities and the State's Attorney to compel them to enforce the laws and wipe out the segregated vice district in Chicago. By bringing all such cases into one court, it was possible for the general public without much difficulty to observe in what manner the authorities enforced the law.

This court is, of course, an unpleasant spectacle. The room is full of those taken in raids on questionable hotels and assignation houses. The majority of the defendants and their witnesses come from the lowest strata of the underworld. It was, therefore, important that this class of cases should be separated from the calendars of courts where respectable people appeared as witnesses, and thus spare them the unpleasant experience of listening to nauseating stories of immorality.

When those cases were distributed throughout the city in the various branch courts the unfortunate women were the prey of unscrupulous bondsmen, shysters, panderers, and other court followers who thrive on the miseries of the unfortunate. With all these cases in one court the activities of such persons can be controlled.

The activities of the police force are, of course, easily observed in such courts, and the social agencies of the city can better render personal service wherever such is required.

Three principal groups of offenders are brought before this court: First, men and women taken in raids on questionable hotels and assignation houses, who are not known as habitual or professional violators. Second, professional prostitutes, including inmates of houses of ill-fame and street walkers. Third, men and women who live from the earnings of professional prostitutes, including panderers, hotel proprietors, and male solicitors.

This court is supported by social service agencies, the Adult Probation Department and the City Health Department with hospitals for diseased women. In the room adjoining the court, from the first day of its establishment, a woman physician has conducted physical examinations of the women who consent to them; and very few refuse such examinations, as they understand they are made in their own interests.

It will be observed that the father and mother appear in the Court of Domestic Relations; the boy in the Boys' Court, and the girl in the Morals Court. Often one family is represented in all three courts. These courts are held in the City Hall near each other, and near to the Psychopathic Laboratory, and thus afford a great opportunity for intensive study of those who conflict with the law.

Besides these specialized courts we have eleven criminal branches in remote parts of the city, in which are heard criminal causes other than those which go to the specialized courts. With the closing of the saloons in Chicago, the dockets of these outside criminal branches are growing smaller, and some of these branches, which had from thirty to forty cases a day, are now down to three or four. The house of correction, which in July had 2,600 inmates, now has about 600. There will soon have to be a rearrangement and a lessening of the number of criminal branches.

Commercial Arbitration—The latest development of the Municipal Court of Chicago relates to Commercial Arbitration. The American Judicature Society employed Samuel Rosenbaum of Philadelphia, who had spent two years in the study of the English courts, to do some technical work for them, and he reported to them that:

"A very large proportion of the business disputes of England never come into the courts at all, but are adjusted by tribunals established within the various trade associations and exchanges. This is especially true of the vast wholesale distributing trades which are responsible for a great part of the immense volume of imports and exports constantly flowing through the ports of England and giving them the commanding position they occupy towards the sea-borne trade of the world. Disputes over the quality and condition of consignments of grain, cotton, sugar, coffee, fruit, rubber timber, meats, hides, seeds, fibres, fats, and countless other articles of commerce, as well as every conceivable variety of dispute that can arise out of a contract for sale and delivery, such as questions of delays, quantities, freight, interpretation, etc.—all these are passed upon by business arbitrators selected by reason of their familiarity with the customs of the trade and with the technical facts involved, and not submitted to juries whose ignorance would usually be equally comprehensive.

"So firmly established is the custom of arbitration in these lines that every contract-form used by shippers, brokers, buyers and users of these articles contains a clause binding the parties to submit to arbitration any dispute that might arise out of the contract. But it is not these trades alone that resort to arbitration. The arbitration clause will be found in every charter-party for the hire of a ship, in every bill of lading for goods carried by sea, in every salvage agreement, in every policy of marine, accident or fire insurance, in every building contract, in every engineering contract whether mechanical, electrical or gas, every lease of property, in every partnership or agency agreement, and in innumerable other forms of contract. Finally, there is a well-confirmed tradition among business men, even though there is no written contract covering a particular dispute, to submit differences to arbitration after they have arisen."

He also called my attention to the fact that the commercial arbitrators in London were not very successful in handling the legal disputes. The credit men of Chicago devised a plan which they succeeded in inducing the State Legislature to pass, whereby the arbitrator in the trade could arbitrate the facts and file his decision in the court. Whereupon the court would apply the law to the facts and enter the judgment indicated.

This, it will be observed, is an improvement over the average court, because the arbitrator in the trade will usually be a man of experience in the particular trade in which the dispute arises, and will be a man of probity of character. He will be selected prior to the dispute. His decision will be superior to that of the average juror or even of the average judge. The disputes will be disposed of in private offices and not under the public eye. No trade secrets will leak out; no animosity will be engen-

dered between buyer and seller or the parties.

Such arbitrators, not being lawyers, should not be trusted with the decision of the questions of law involved. When the court decides the question of law, the higher court may review it, so that the litigant gets an expert opinion of fact and the highest opinion of the highest state court on the law.

Recently a set of rules was promulgated by the Municipal Court and the Association of Commerce of Chicago for adoption by all the business houses and trades in Chicago. These rules were adopted by the Municipal Court and are a part of its rules.

I look forward to this new type of commercial court to be the court of the future in commercial matters, because it is an improvement on anything the courts can furnish in settling facts truthfully and expeditiously.

Results—It will be interesting to observe the result of this court machine for a period of years. I have the figures for twelve years. This is a long enough period to show what the court is capable of doing in the dispatch of its business. During this twelve-year period, the city has grown by nearly one million inhabitants, while the court has increased by the addition of three judges only. The volume of its business has practically doubled.

Date	Cases Filed	Cases Disposed of
1907	100,838	92,151
1908	124,136	121,775
1909	125,713	126,861
1910	136,235	136,571
1911	147,055	143,661
1912	159,900	162,608
1913	180,030	179,365
1914	204,532	200,031
1915	203,625	200,308
1916	190,565	186,967
1917	218,720	216,625
1918	184,957	175,521
1919	166,431	170,769

These figures show that the court disposes of its business with expedition, and that by effective methods has been able by a very small addition to the staff to do more than twice the business that it did in the first year.

In the matter of expenditures, the court has brought in an average revenue to the city of $500,000.00 a year, and the cost to the city was an average of $800,000.00 a year.

I wish here to call attention to the importance of the sworn affidavits of merit in bringing about expedition. The amount of the judgments rendered by the court the first year was $1,501,460.01, and is now upwards of $7,000,000.00 per year. Of the judgments about two and one-half millions are entered by default; about two and one-half millions in trials by the court, and about one-half million in trials by jury and about one and one-half millions by confession. Observe the larger number by default, two and one-half millions. This is due to the fact that the defendant cannot make the affidavit of merit and that amount is disposed of on the pleading as a mere matter of administration.

And now let it be said, that however much the reader may disagree with me on matters of opinion, we must be of one mind as to the essential importance of a strong, responsible trial court for any great city? These are critical times for all our institutions, both civic and social. Vast forces, in no previous generation even dreamed of, have been turned loose on the modern world. We must rally to the upbuilding of our judicial establishment if we would see the good preserved amid the cataclysmic disturbances of our times. The loose-jointed, decentralized and more or less flabby judicial organization of the past must be reconstructed by its friends or it will be junked by its enemies.

Reconstruction must be first in the great cities of the nation, for they are the centers of friction and strain. We must have courts strong enough to protect the fiber of

society, alert to meet new stresses, and sensitive to the rights of the humblest citizen.

This is not to be done by making over or creating inferior tribunals of small jurisdiction. The weakest feature of the Municipal Court of Chicago has been its limitations, just as its strength has come from its great powers. Where it has failed it has been because it was an inferior court, one carrying less professional and social prestige and less salary for its judges, and so handicapped in its competition for good judicial material. A raise in salaries a few years ago resulted in improving the average of candidates, but this has been in part offset by the uncertainties of politics which have often deprived the court of a trained and useful member. With all of its study of the causes of crime and methods for preventing crime, it has been handicapped by reason of having only misdemeanor jurisdiction. The Criminal Court of Cook County, which monopolizes felony trials, has gone on in the same old way for decades, manned by a shifting force of unwilling judges who remain for a time and then escape to the comparative ease of unmanaged civil calendars. This fatal lack of co-ordination in criminal jurisdiction contributes to the prevalence of crime in Chicago, just as it accounts for unfavorable criminal conditions in most of the large cities of the country. Only a few months ago Detroit embarked upon an experiment which will soon be known everywhere. It consolidated its criminal jurisdiction in a single tribunal, thus making one body of judges all powerful in this field, and solely responsible. The little cases which to many seem trivial and nauseous, but which in fact are the seeds from which the serious cases spring, are now dealt with by judges who alone are answerable for the safety of the citizens of Detroit. The position of criminal court judge, in even the traditionally unimportant branches, has been enhanced and made equal to that of any judge in that city in salary, in power, and in prestige. Now for the first time we have an illustration of what modern court organization can do in a most difficult situation, for Detroit was on its way to become the worst city in the country. It was a haven for criminals of the worst type.

With no change whatever in criminal procedure the new organization faced its task and in a few weeks completely changed the situation. In felony cases there is arraignment on warrant in the morning and presentment on information in the afternoon of the same day. Those who plead guilty are on their way to the penitentiary the following morning. The others are tried within a week. This close-coupled criminal court wiped out the bond shark and the bogus bail evil the very first day it began business. It drove the shyster lawyer to cover on the first day and he hasn't come out yet.

No more forceful illustration of the value of good court organization can be imagined than that afforded in recent months in Detroit. There is no longer any doubt that Detroit will drive out the professional criminal and will reduce crime to a minimum never deemed possible in this country. Detroit is a city redeemed, no longer fearful of the dangers threatened to society and industry by criminal and anarchistic-minded individuals.

I do not believe that Detroit has yet gone the whole length of judicial reconstruction. That time will come when the city shall have merged all its judges into a single, departmentalized court, with the presiding justices of departments and a chief justice to constitute an administrative board.

The principles of successful judicial administration which are emerging from the welter of trials and mistakes are after all

comparatively simple. Somebody must be made responsible for the due administration of justice in all its numerous fields. To this end there must be unified organization and large administrative powers. Correlative to these powers there must be provision for accurate and frequent administrative statistics, a thing now lacking in most of our courts, though absolutely necessary to efficient administration. And there must be meetings of judges so that the responsibility will be shared by all and so a forum will exist for the airing of complaints and the correction of faults before they shall have become scandals. These are the great popular checks upon the power which our courts must possess before they can begin to function intelligently and effectively.

Real judicial progress irks some judges. Those who have sat long on softly padded benches, drowsing over the testimony in slow-moving litigation, unmoved by the dangers and the demands of an ever-accelerated age, blind to every criticism and to every warning, rouse themselves only when their privileges are threatened by the success of principles of judicial administration that impress every judge to deliver the best that is in him. They resent the idea that records are kept of their activities, or inactivities. They much prefer to shirk responsibility for the court's performance of many of its hardest and least pleasant duties. They love obscurity and a pretense of power. Whether they shall in any given state succeed in thwarting the spirit of progress remains to be seen. But wherever they are found, clinging to privilege, they will be found opposed to the progress which a live jurisprudence must make if it is to avoid a constantly threatened dissolution. The law of growth and adaptation is not to be escaped. It is one law which the most swankish supreme court cannot set aside.

HARRY OLSON.

Chicago, Ill.

INSURANCE—VOLUNTARY EXPOSURE TO DANGER.

FEDERAL SAV. & INS. CO. v. RAGER.

128 N. E. 773.

Appellate Court of Indiana. Nov. 23, 1920.

To render insured holder of a policy, providing indemnity against loss of life by accident, guilty of a voluntary exposure to unnecessary or obvious risk of injury, he must have done some act intentionally which reasonable and ordinary prudence would pronounce dangerous.

ENLOE, J. This was an action by the administrator of Frank H. Puthoff, deceased, upon a policy of insurance issued by appellant to said Frank H. Puthoff, providing indemnity against loss of life, by accident.

To a complaint in one paragraph, the appellant filed answer in two paragraphs, the first being a general denial, and the second admitting partial liability, and relying upon a clause in said policy which was as follows, to-wit:

"If the injuries, whether fatal or non-fatal * * * are caused wholly or in part from voluntary exposure to unnecessary danger or obvious risk of injury, * * * then, in all cases referred to in this paragraph, the liability of the company shall be only one-fifth of the amount which would otherwise be payable."

This paragraph also alleged that the deceased did voluntarily and unnecessarily expose himself to the danger of being struck and injured by a car then approaching the highway crossing, which deceased was about to cross on the line of an electric interurban railway, and that as a result of such exposure the deceased was struck and killed. This paragraph also alleged the tender of said one-fifth of the principal sum named in said policy to appellee, his refusal to accept the same, and the payment of the same into court.

A reply in denial to this paragraph of answer closed the issues, which were submitted to a jury for trial, resulting in a verdict for plaintiff for the full amount named in said policy.

The only error presented relates to the action of the court in overruling appellant's motion for a new trial. The questions presented for our consideration raised under said motion relate to the sufficiency of the evidence to sustain the said verdict, error in giving certain instructions, and error in refusing to allow appellant to amend its answer during the trial. It is insisted that under the undisputed facts of this case the said deceased vountarily and unnecessarily exposed himself to unnecessary

danger, or obvious risk of injury, which caused his death, and that he was therefore at the time he received such injury, acting within the terms of said condition in said policy, limiting the benefits thereof to one-fifth of the face of said policy. The record discloses that the deceased while traveling in an automobile was struck at a highway crossing by an electric interurban street car and killed.

In the case of Travelers' Ins. Co. v. Randolph, 78 Fed. 754, 24 C. C. A. 305, which was an action upon a policy of insurance, the Court said:

"What do the words 'voluntary exposure to unnecessary danger' in the contract in suit import? * * * The words 'voluntary exposure to unnecessary danger,' literally interpreted, would embrace every exposure of the assured not actually required by the circumstances of his situation, or enforced by the superior will of others, as well as every danger attending such exposure that might have been avoided by the exercise of care and diligence upon his part. But the same words may be fairly interpreted as referring only to dangers of a real, substantial character, which the insured recognized, but to which he nevertheless purposely and consciously exposed himself, intending at the time to assume all the risks of the situation. The latter interpretation is most favorable to the assured, does no violence to the words used, is consistent with the object of accident insurance contracts, and is therefore the interpretation which the court should adopt. One of the accepted meanings of the word 'voluntary' is 'done by design or intention; purposed; intended.'"

In the case then under consideration by the Court, one Mitchell had fallen from a moving train, and thereby received injuries which caused his death. The evidence showed that he had gone to the platform of the sleeping car in which he had been riding as a passenger, and had been standing on the steps, while the train was running. The company defended on the ground that the deceased had voluntarily exposed himself to unnecessary danger, and that therefore there was no liability, within the terms of his policy. The District Judge had charged the jury that—

"Mere negligence or inattention is not an exposure to danger within the meaning of the policy, mere thoughtlessness, but it requires a degree of appreciation of danger at the time to make it voluntarily assumed, and a voluntary exposure. * * * If you find that standing on the platform, under all circumstances of this case, taking into account his position on the train, the speed of the train, the track, and everything else that makes up the situation where the accident occurred, if you find that that was dangerous, and that, being conscious of that danger, he took a position that exposed him to it, and death resulted, your verdict should be for the defendants, otherwise for the plaintiff, as to that issue."

This instruction was approved by the Circuit Court of Appeals, Sixth Circuit, as being expressive of the law, the Court saying:

"There are, it must be admitted, authorities that look the other way. But we are of the opinion that the better reason is with the cases holding that, the words 'voluntary exposure to unnecessary danger,' in accident policies such as this one here in suit, import a consciousness of the danger, and an intention to risk the consequences of exposing one's self to it."

In the case of Union Casualty Co. v. Harroll, 98 Tenn. 596, 40 S. W. 1082, 60 Am. St. Rep. 873, the Court, in discussing the effect of the clause now under consideration contained in an insurance policy, said:

"A voluntary act is an intentional one, one which the actor of his own will, within the power of choice, determines to do or perform, so this condition is to be read as the equivalent of one exempting the insurer from liability where death results from an intentional exposure of one's self to unnecessary danger. Both terms imply some degree of knowledge or apprehension of the danger incurred and a purpose to take the risk."

In the case of Burkhard v. Travelers' Ins. Co., 102 Pa. 262, 48 Am. Rep. 205, the defense was that the insured had "voluntarily exposed himself to unnecessary danger," an exception in the policy. The Court in passing on the clause in question said:

"To make him guilty of a 'voluntary exposure to danger' he must intentionally have done some act which reasonable and ordinary prudence would pronounce dangerous. * * * Hidden danger may exist; yet the exposure thereto without any knowledge of the danger does not constitute a voluntary exposure to it. The approach to an unknown and unexpected danger does not make the act a voluntary exposure thereto."

In the case of Conboy v. Railway, etc., Ass'n, 17 Ind. App. 62, 46 N. E. 363, 60 Am. St. Rep. 154, the clause relied upon was, "vountary exposure to unnecessary danger," and the Court said:

"Giving the words definitions, and the language a meaning * * * most favorable to the insured, the exception may be construed as contemplating knowledge on the part of the insured of the existence of the danger or peril, and an encountering of it by him willingly."

See, also Commercial Travelers', etc., Ass'n v. Springsteen, 23 Ind. App. 657, 55 N. E. 173.

Each of the instructions given, of which complaint is made, is in harmony with the law as thus declared, and the Court did not err in giving the same.

Neither did the Court err in refusing to allow the appellant to amend its said answer. The proposed amendment would, if the same

had been allowed, simply have introduced into the case an element which could have no controlling influence—it was immaterial to the matter in suit.

The question as to whether the deceased knew of the presence or approach of said car by which he was struck and killed, and, knowing such fact, voluntarily exposed himself to the danger of being struck by said car if he attempted to make said crossing ahead of said car, was by the trial court rightfully submitted to the jury, and they by their verdict have found that he did not know of such danger, and did not voluntarily expose himself thereto. The verdict is sustained by the evidence. We find no error in this record, and the judgment is therefore affirmed.

REMY, C. J., not participating.

NOTE—*Necessary Inference of Danger in Exposure to Injury.*—Clauses in accident insurance policies providing against voluntary exposure to unnecessary danger or obvious risk of injury have long been used by insurance companies and have come under construction by the courts. The line of cases which the opinion in the instant case cites does not embrace another view, which is that whether assured was conscious of the danger to which his voluntary act exposed him or not, yet he might be held to be conscious, if the danger was so obvious that a man of ordinary prudence would have observed it.

Thus in Travelers' Protective Association v. Small, 115 Ga. 455, 41 S. E. 628, the Court said: "Whether one who attempts to board a moving train is engaged in an act which is dangerous in its nature, or is an obvious risk of injury depends upon the circumstances under which the act is attempted to be performed. * * * It is not necessarily what would be done by a particular individual * * * but what would be done ordinarily by a man in the exercise of due care and caution."

In Price v. Standard Life & Acc. Ins. Co., 92 Minn. 238, 99 N. W. 887, it was ruled that negligence of insured in bringing on such exposure made the clause apply. But there being no prior negligence the coming into sudden danger prevented the clause from applying.

In Jamison v. Continental Cas. Co., 104 Mo. App. 306, 78 S. W. 812, the Court *arguendo* took the view in the line of cases cited in the instant case. And in Michigan it was said that the riding of a horse whose disposition was fractious and by which insured was thrown and killed, was enough to make the exposure a jury question.

In Diddle v. Continental Casualty Co., 65 W. Va. 170, 63 S. E. 962, 22 L. R. A. (N .S.) 779, the clause was held to embrace "either reckless or deliberate encountering of known danger *or* danger so obvious that a reasonably prudent man would have observed and avoided it."

And later the same Court held that where a pedestrian at a crossing steps in front of an approaching train in full view he will be held consciously to have voluntarily exposed himself. Bassford v. Pittsburg, etc., R. Co., 70 W. Va. 280, 73 S. E. 926. These rulings were commented on and approved in Combs v. Colonial Cas. Co., 73 W. Va. 473, 80 S. E. 779, a case in which the accident occurred to one walking along the track and was warned by an approaching train, which warning he was observed to notice. It was said that had deceased "looked or even glanced" he would have instantly seen that the train was too near and was approaching at too great a speed, to permit him to cross the track in front of it with safety."

In Fidelity & C. Co. v. Sittig, 181 Ill. 111, 54 N. E. 903, 48 L. R. A. 359, the clause was said to refer to exposure where there was consciousness of danger and where danger was so apparent, that a man of ordinary intelligence necessarily would be conscious of it.

In Rebman v. Gen. Acci. Ins. Co., 217 Pa. 518, 66 Atl. 859, 10 L. R. A. (N. S.) 957, the clause was ruled to refer to known danger and to danger obvious to reasonable apprehension. It seems to this annotator that mere pre-occupation of the mind that might keep one from having knowledge of the presence of danger ought not to excuse unconsciousness of its presence. One must go about the world with his faculties awake to his surroundings or take the consequences as in voluntary exposure.

C.

BOOK REVIEWS.

BARNES' FEDERAL CODE, 1921 SUPPLEMENT.

The 1921 Supplement to the popular one volume edition of the United States Statutes prepared by Mr. Uriah Barnes, which appeared in 1919 is just off the press.

The purpose of this volume is as its name implies, simply a compilation of the Acts of Congress since Jan. 1, 1919, under the same classification as that used in the main volume. The number of these new acts is not an insignificant one nor is their importance to be ignored. Here are a few of the many important laws since 1918:

Esch-Cummins Transportation Act, Railway Labor Board Act, Merchant Marine Act, Water Power Act, Revenue Act of 1919, Covering Income and Excess Profits, Excise, Estate, Transportation, Beverage, Tobacco, and Stamp Taxes and other forms of Internal Revenue, Amendments of Farm Loan Act, Food and Fuel Act, Volstead Prohibition Act, Prohibition and Suffrage Amendments, Amendments of Judicial Code, Amendments of Criminal Code, Coal and Oil Leasing Act, Census Act, Reorganization of Postal Service Act, Bills of Lading Act, Vocational Education Act, Women's Bureau Act,

Child Labor Law, Civil Service Retirement Act, Reorganization of Army and Navy Act, Articles of War, Militia and National Guard Act, Laws Concerning Soldiers and Sailors Act, Amendments of War Risk Insurance Act, Re-enactment of Pension Laws.

Printed in one volume of 503 pages and bound in keratol.

HOLMES' FEDERAL INCOME TAX, 1921 SUPPLEMENT.

The great work of Mr. George E. Holmes of the New York bar on Federal Income and Profits Taxes has been brought down to date by a supplement published in January, 1921.

There has been no material change in the statute law on this subject but there has been a great many changes in the regulations of the treasury department concerning the administration of the various tax laws. There are three groups of Regulations. They are Regulations 45 on the Income Tax, Regulations 55 on the Stamp Taxes and Regulations 50 on the Capital Stock Tax. Many amendments to these regulations have been made in the last few years.

In addition to the changes in the Regulations there have been numerous rulings on specific questions arising under the income and excess profits tax laws by the Treasury Department. This Supplement contains all these new regulations and Treasury Decisions, but also opinions by the Attorney General and by the Solicitor for the Treasury Department; also Office Decisions, and Recommendations of the Advisory Tax Board and the Committee on Appeals and Review.

These new regulations, decisions and rulings contain a great amount of new matter on such important topics as excess Profits, Inventories, Corporations, Associations and Trusts, Personal Service Corporations, particularly What Constitutes a Personal Service Corporation, Insurance Companies, Sales and Exchange of Property including Corporate Reorganization, Deduction of Losses, Deduction of War Tax paid on facilities furnished by Public Utilities, including Tax on Railroad and Steampship Tickets, Admissions and Dues and Taxes paid on Semi-Luxuries; Depletion especially as to Owners and Lessees of Oil and Gas Wells and Timber, When Income and Deduction should be Reported, Collection and Information at the Source, etc.

Printed in one volume of 539 pages and bound in black cloth and red leather back.

HUMOR OF THE LAW.

Prosecuting Attorney (to opponent): "You're the biggest boob in the city."

Judge (rapping for order): "Gentlemen, you forget I am here."—*Syracuse Herald.*

Judge (at trial of divorce case)—So your wife left you without any warning?

Murphy—She did thot, yer honor. Wan night she threw th' flatiron at me an th' next mornin'—whisht!—she was gone.

"Your Honor," said the prisoner with tears in his eyes, "do you realize what it means to send me up for 10 years?"

"Yes," replied the Judge. "It means that you are going to do more work for the State than you ever did for your wife and seven children. Next case." — *Birmingham Age-Herald.*

"I hate to hold you up," said the polite footpad, "but you see what happens to people who stay out late."

"But business kept me out late," protested the pedestrian.

"Same here," replied the footpad, as he returned the pedestrian's tin watch and kept his bank roll.—*Birmingham Age-Herald.*

The influence of moving pictures upon susceptible persons in the audience is greater, much greater, than has been supposed. Among the prisoners arraigned in a New York police court recently was a young man of 27, whose accuser was a red and wrathy cop. "He up and kissed me," the latter told the judge. And the young man's defense? He said the picture was so sentimentally moving that he didn't know what he was doing. It was dark in the house. He just had to kiss somebody; and, haplessly for him, the receiving end of his osculatory effort was a policeman. We may quote the outraged officer thus:

Willie kissed me when we met;
Witnesses I got who seen him;
S'help me, judge, I feel it yet!
Speak the word, and watch me bean him;
Judge, them movie-shows are bad,
If they ain't, the good ones missed me.
Holy smokes, the bump I had!—
Willie kissed me!

As a matter of curiosity, we should like to know the name of the movie star who was being featured. She seems able to "get her stuff over."—Arthur H. Folwell, in *Leslie's.*

WEEKLY DIGEST.

Weekly Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Admiralty**—Maritime Contract.—A contract for the complete construction of a ship or for supplying materials therefor is non-maritime, and not within admiralty jurisdiction.—The Francis McDonald, U. S. S. C., 41 Sup. Ct. 65.

2. **Assignments**—Equity.—An assignment of a naked possibility or expectancy of an heir to an estate, if in good faith and for an adequate consideration, is valid, and will be upheld in equity.—Richey v. Richey, Iowa, 179 N. W. 830.

3. **Bankruptcy**—Custom of Trade.—A contract made in good faith and in accordance with a custom of the trade, under which defendant consigned automobile tires and tubes to a subsequent bankrupt, a local dealer, for sale, and containing no provision for the purchase of such goods by bankrupt, held valid, and to entitle defendant, on insolvency of bankrupt, to retake the goods remaining unsold.—Healey v. Boston Batavia Rubber Co., U. S. D. C., 268 Fed. 75.

4. **Banks and Banking**—Negligence.—Where investments in a particular loan were improvident and improper as made by a trust company as agent for its client, for its negligence in making such investment a cause of action arose.—Wiseonsin Trust Co. v. Cousins, Wis., 179 N. W. 801.

5. **Bills and Notes**—Unconditional Promise.—Instruments reading: "On demand after date, I promise to pay to the order of A. M. S. $1,000, with interest at 8 per cent per annum. In case of S.'s decease, the principal to be kept as a fund for the Baptist Society at West Minster, Mass., interest to go to T. M. W., and in case of her decease, interest to go to said Baptist Society"—held negotiable promissory notes, within Rev. Laws, c. 73, § 18, containing an unconditional promise to pay the payee at all events.—Goodfellow v. Farnham, Mass., 128 N. E. 776.

6. **Boundaries**—Courses and Distances.—In case of disputed boundary between grants, where the location of objects called for are in dispute, that location should be adopted which most nearly conforms to the courses and distances.—Bryant v. Terry, Ky., 225 S. W. 242.

7. **Brokers**—Dual Agency.—Contracts by which brokers are to represent both parties and to receive commissions from both are contrary to public policy, and cannot be recovered on, unless both principals are shown to have knowledge of the double employment.—Bowers & King v. Roth, Iowa, 179 N. W. 859.

8.——Efficient Cause.—Broker, who procured purchaser, introduced him to owner, showed him the land, and conducted every negotiation between purchaser and owner except the final consummation of the sale, held the efficient cause of the sale.—Kaufman v. Jean, Ky., 225 S. W. 239.

9. **Carriers of Goods**—Bill of Lading.—The rule that the form in which a bill of lading is taken is indicative of the title to the goods is not conclusive.—Banik v. Chicago, M. & St. P. Ry. Co., Minn., 179 N. W. 899.

10. **Carriers of Passengers**—Alighting Passenger.—A carrier is bound to use a high degree of care toward its passengers entering or alighting from its trains, and such care denotes no more than care commensurate with the risk of danger.—Rhodehouse v. Director General of Railroads, N. J., 111 Atl. 662.

11.——Assault.—Where a passenger, who was assaulted in and ejected from depot owned by a railroad other than that by which she was to be transported, but used latter for accommodation of its passengers pursuant to an agreement, both railroads were liable, notwithstanding provisions of their agreement.—Ashland Coal & Iron Ry. Co. v. Elswick, Ky., 225 S. W. 244.

12.——Intending Passenger.—Ordinary prudence required an intending passenger, standing on a platform within two feet of the track and signaling the approaching car, to step back so that she would not be struck by the overhang of a step.—Pond v. Connecticut Co., Conn., 111 Atl. 621.

13. **Chattel Mortgages**—Recording.—Where a motor-truck mortgage was recorded, occasional trips across the state line to a neighboring town in another state did not constitute a removal to such other state, requiring recording of the mortgage there.—Flora v. Julesburg Motor Co., Col., 193 Pac. 545.

14. **Constitutional Law**—Contract.—All contracts are subject to valid governmental regulations, and the organic law forbids a violation of the obligation of contracts that are lawful when made and that are not subject to the fair exercise of sovereign governmental power to

conserve the general welfare.—Prairie Pebble Phosphate Co. v. Silverman, Fla., 86 So. 509.

15.——Obligation of Contract.—Order by a state Public Utilities Commission, permitting the utility corporation to charge rates in excess of those fixed by its contract with a consumer, does not impair the obligation of a contract.—Public Utilities Commission of Kansas v. Wichita R. & Light Co., U. S. C. C. A., 268 Fed. 37.

16. **Contracts** — Public Policy. — Contracts, having for their object the corruption of a public officer, or the tendency of which is to tempt such officer from the proper performance of his official duties, are contrary to public policy and unenforceable.—Blair v. Fitch, Iowa, 179 N. W. 863.

17.——Time of Essence.—In equity time is not necessarily of the essence of the contract, because the time for performance is fixed.—Fannin v. Devine, Ill., 128 N. E. 745.

18. **Corporations**—Proof.—Where the corporate existence of a plaintiff is denied in the answer, the proper method of proof is by the production of the original certificate of incorporation, or a certified copy thereof, if a domestic corporation, and if a foreign corporation by a copy of the certificate of incorporation, duly certified according to the act of Congress.—Maagget v. A. Brawer Silk Co., N. J., 111 Atl. 656.

19.——Receivership.—Where affairs of a company were involved through the disputes of stockholders, officers, and trustees, interfering with the successful operation of its property, and causing its assets to be dissipated, and it was heavily in debt and wholly insolvent, creditors were suing and threatening to sue, there was ample ground for appointment of a receiver.—Holland v. Silver Basin Mining Co., Wash., 193 Pac. 500.

20. **Courts**—Implied Contract.—Act March 4, 1915, authorizing the Secretary of Agriculture to expend a sum thereby appropriated for the eradication of animal disease, including the payment of claims growing out of the destruction of animals or materials contaminated by or exposed to such disease, does not itself raise an implied contract by the United States to pay for property so destroyed, and therefore an owner of such property cannot sue for its value in the Court of Claims, where there was no purchase of the destroyed property, or agreement therefor.—Great Western Serum Co. v. United States, U. S. S. C., 41 Sup. Ct. 65.

21.——Jurisdiction.—Where the question of jurisdiction presented and decided turns on questions of general law, determinable on principles alike applicable to actions brought in other jurisdictions, the jurisdiction of the federal court as such is not so presented as to authorize a direct appeal to the Supreme Court.—De Rees v. Costaguta, U. S. S. C., 41 Sup. Ct. 69.

22. **Creditors' Suit** — Equitable Assets. — A judgment creditor, before proceeding in equity to subject equitable assets of his debtor to the payment of the judgment debt, must pursue his legal remedies to every available extent, and have a return of the execution that no goods of the debtor are to be found, if such is the case.—Holly v. Gainesville Nat. Bank, Fla., 86 So. 444.

23. **Criminal Law**—Accomplice.—One is not an accomplice who cannot be prosecuted for the offense with which the accused is charged.—Burgess v. State, Tex., 225 S. W. 182.

24.——Comparison of Writing.—In a prosecution for theft, where there was an issue of fact as to whether accused had indorsed a check delivered to an alleged co-conspirator, an admitted signature of accused was admissible in evidence.—Miller v. State, Tex., 225 S. W. 262.

25.——Confession.—Where a written confession was made under domination of the same officer who had previously assaulted the prisoner in obtaining an oral confession, the presumption should obtain that the same influences which coerced the admission of guilt in the first place impelled the subsequent reaffirmance of the guilt, although at the time of the written confession there were no threats or violence used.—Williams v. State, Tex., 225 S. W. 177.

26.——Confrontation.—A conviction in a capital case cannot be set aside for the admission of depositions in pursuance of voluntary stipulations by the parties. By making such stipulation the defendant waives his constitutional right to be confronted by the witness. The stipulation is binding, whether made by the defendant or his counsel, and whether his counsel be of his own choosing or are appointed by the court to represent him in the trial of his case; especially where no objection to the admission of the depositions, or to the power of counsel to make the agreement, was raised.—Denson v. State, Ga., 104 S. E. 780.

27. **Dower**—Disposal by Wife.—The policy of the law is to permit a woman to be her own free agent in disposing of her dower interest in property.—Schefrin v. Wilensky, N. J., 111 Atl. 661.

28. **Easements**—Non-User.—An easement may be lost by non-user in 20 years, and even in less time if it is affected by positive acts of invasion. A franchise may be lost in the same way; non-user being one of the common grounds assigned as a cause of forfeiture. An easement may be abandoned by an act evidencing an intention to do so. Abandonment is made up of two elements, act and intention.—Bergen Turnpike Co. v. North Bergen Tp., N. J., 111 Atl. 686.

29.——Prescription.—Open, continuous, and notorious use by an owner of land, of a private way over an adjoining tract of land owned by another person, known, acquiesced in, unobjected to, and unprotested by the latter, is presumptively adverse to him, and enjoyed under a bona fide claim of right.—Staggers v. Hines, W. Va., 104 S. E. 768.

30. **Evidence**—Burden of Proof.—The burden of proof is on defendant in a case of recoupment.—Betts v. Rendle, Mass., 128 N. E. 790.

31.——Pedigree.—Declarations, both written and oral, are admissible to prove descent and relationship and particular facts of birth, marriage and death, and the time when such events may have happened, where made by some member of family concerned, since deceased.—Sheffield Iron Corporation v. Dennis, Ala., 86 So. 467.

32.——Res Gestae.—In action against street railroad for injuries to seated passenger against

whom passenger who had just boarded car fell when car started with a jerk, testimony as to exclamations by latter passenger at the time of her fall held admissible as a part of the res gestae.—Kelly v. Kansas City Rys. Co., Mo., 225 S. W. 133.

33. **Frauds, Statute of** — Restrictions in Equity.—While equity courts will, under some circumstances, recognize restrictive easements not recognized by courts of law in order to protect parties in the use of their property, and such easements usually arise from written covenants, yet writing is not essential.—Florsheim v. Reinberger, Wis., 179 N. W. 793.

34. **Habeas Corpus**—Jurisdiction.—A District Court of the United States is without jurisdiction on habeas corpus to review and adjudge invalid the judgment and sentence of another District Court, which had jurisdiction of the defendant and the subject-matter.—Rogers v. Desportes, U. S. D. C., 268 Fed. 83.

35. **Highways**—Reasonable Care.—A pedestrian has the same right to the use of a public highway as an automobile or any other vehicle; but, in using such highway, all persons, pedestrians and drivers of automobiles alike, must exercise reasonable care under the circumstances to prevent accidents.—State v. McIvor, Del., 111 Atl. 616.

36. **Husband and Wife**—Coverture.—A married woman by reason of her coverture may not make a valid contract of co-partnership, yet she may invest her money or labor in a mercantile business and acquire an interest therein.—Le Noir v. McDaniel, Fla., 86 So. 435.

37.——Tort of Wife.—Where a husband and wife jointly owned and kept a dog, the husband is chargeable with knowledge on the wife's part that the dog was afflicted with rabies.—Pettus v. Weyel, Tex., 225 S. W. 191.

38. **Infants**—Rescission.—Where a minor was acting for himself in enrolling with a military college, the belief of the college president that he had authority to bind his father, did not establish a contract with the father, or prevent the minor from rescinding the contract in the absence of estoppel.—Peacock Military College v. Hughes, Tex., 225 S. W. 221.

39. **Innkeepers**—Burden of Proof.—In an action against an innkeeper for loss of trunk, such loss by pledgee is prima facie evidence of negligence, and the burden is on him to rebut it.—Dutton Hotel Co. v. Fitzpatrick, Col., 193 Pac. 549.

40. **Insurance**—Death by Beneficiary.—Even though death of insured was caused by gross negligence of beneficiary, so that latter was guilty of felony of involuntary manslaughter, under Pen. Code, § 192, that fact does not defeat recovery by beneficiary on accident insurance policy.—Throop v. Western Indemnity Co., Cal., 193 Pac. 263.

41.——Foreign Corporation.—A foreign corporation, which solicited insurance by its agents within the state and delivered the policy to insured therein, is doing business within the state so as to be subject to Code, § 1819, requiring all life insurance companies doing business within the state to attach a copy of the application to the policies issued.—Dixon v. Northwestern Nat. Life Ins. Co., Iowa, 179 N. W. 885.

42.——Reformation of Policy.—The negligence of the secretary in writing the policy so that it did not correctly express the actual agreement of the parties was not a bar to the right of the company to have the policy reformed.—Haley v. Sharon Tp. Mut. Fire Ins. Co., Minn., 179 N. W. 895.

43. **Intoxicating Liquors**—Volstead Act.—The eighteenth amendment to the Constitution of the United States, and the "national prohibition act," popularly known as the Volstead Act, do not supersede or abrogate the existing state law known as the prohibition act, approved March 28, 1917.—Jones v. Hicks, Ga., 104 S. E. 771.

44. **Judgment**—Extrinsic Evidence.—A former judgment or decree may be set aside and annulled for fraud, but it must be a fraud extrinsic or collateral to the questions examined and determined in the action.—McGehee v. Curran, Cal., 193 Pac. 277.

45.——Jurisdiction.—Jurisdiction of the subject-matter of a suit depends on allegations, and not on facts, and even if a court sustains its jurisdiction erroneously, when put in issue, its judgment is not subject to collateral attack, unless want of jurisdiction is shown on its face.—Hartford Life Ins. Co. v. Johnson, U. S. C. C. A., 268 Fed. 30.

46.——Law and Fact.—A mistake of law, as well as a mistake of fact, may afford ground for relief from a judgment.—Flannery v. Kusha, Minn., 179 N. W. 902.

47. **Landlord and Tenant**—Loss of Profits.—In a tenant's action for damages for failure to keep premises used for a pool hall in repair, it was error to refuse to instruct that plaintiff could not recover for loss of profits after Acts 36th Leg. (1919) c. 14, went into effect making operation of pool halls unlawful.—Midkiff v. Benson, Tex., 225 S. W. 186.

48.——Mesne Profits.—Where a landlord has terminated a lease by notice, an allowance of rent after such time is erroneous; the landlord's remedy being an action for mesne profits or damages.—Perry v. White, Col., 193 Pac. 543.

49. **Libel and Slander**—Publication.—In libel action against newspaper, it is no defense that the newspaper only published statements communicated to it by a third person.—Finnegan v. Eagle Printing Co., Wis., 179 N. W. 788.

50. **Licenses**—Revocable.—A gratuitous license to repair a fence situated upon the land of the licensor is revocable at the will or pleasure of the licensor.—Gard v. State, Miss., 86 So. 460.

51. **Life Estate**—Mortgagor.—It was the duty of the life tenant of mortgaged property received from his wife, the mortgagor, on her death, to pay the interest on the mortgage.—Porter v. Porter, Mass., 128 N. E. 795.

52. **Malicious Prosecution**—Probable Cause.—A cause of action for malicious prosecution exists when process, civil or criminal, is used out of malice and without probable cause.—Shute v. Shute, N. C., 104 S. E. 764.

53. **Master and Servant**—Independent Contractor.—One constructing a house, subject to the owner's control in respect to the details of the work, is a servant, and not an independent contractor.—Winslow v. Wellington, N. H., 111 Atl. 631.

54.——Latent Defects.—Both master and servant must exercise reasonable care as to the reasonable safety of instrumentalities for the use intended, but reasonable care on the part of the servant does not require an inspection for latent defects, while on the part of the master it does ordinarily require reasonable inspection.—Cohen v. Stevenson, Conn., 111 Atl. 618.

55.——Workmen's Compensation Act.—"Employment," within Workmen's Compensation Act, as regards injury arising out of and in the course of the employment, is not limited to the exact time when the employee reaches his work place or the moment when he ceases work, but includes a reasonable time before and after, length of which depends on the circumstances of each case, and is usually a question of fact.—Indian Creek Coal & Mining Co. v. Wehr, Ind., 128 N. E. 765.

56. **Mortgages**—Redemption.—Where a mortgage did not authorize the mortgagee or his assignee to purchase at foreclosure sale, the mortgagor is entitled to disaffirm sale on foreclosure in case of the mortgagee or assignee's purchase, and to redeem, as mortgagee could not purchase without such authorization.—Fortson v. Bishop, Ala., 86 So. 399.

57. **Negligence**—Attractive Nuisance.—A pond or barrow pit situated in a railroad's right of way being such as is common wherever railroads have been constructed, without characteristics different than natural collections of water, and without additional attraction to children

or enhancement of danger, the railroad was not liable for death of a five-year-old child, who had wandered from home, from drowning therein, on any theory of attractive nuisance.—Blough v. Chicago Great Western R. Co., Iowa, 179 N. W. 840.

58. **Pleading**—Admissions.—Where a party to an action at law relies upon admissions in the pleadings of the other party as proof in support of his case, he must accept the admission in its entirety, and any statement in the pleading of another fact connected with the admission which nullifies or modifies the effect of the admission must also be held as established, for the whole statement must be taken and construed together.—Sterry v. Fitz-Gerald, N. J., 111 Atl. 636.

59. **Process**—Amendment.—Where the summons in divorce proceedings was so defective as not to give the court jurisdiction, the defect could not be cured by amendment.—Perry v. Perry, Vt., 111 Atl. 632.

60. **Railroads**—Federal Control.—Where a shipper sustained loss or damage to freight carried over a railroad during the period of federal control, the railway company is not liable. —Morrell v. Northern Pac. Ry. Co., N. D., 179 N. W. 922.

61.——Negligence Per Se.—An automobile driver, who could have seen approaching train in time to have avoided collision, if he had looked and who failed to stop and look before going on the track, held negligent as a matter of law.—Hines v. Cooper, Ala., 86 So. 396.

62.——Risk of Injury.—In the absence of statute regulating the subject, an express messenger's agreement to assume all risk of injury incidental to his employment, from whatever cause arising, is valid and binding.—Wells Fargo & Co. v. Taylor, U. S. S. C., 41 Sup. Ct. 93.

63.——Safety Appliance.—Safety Appliance Act March 2, 1893, as amended by Act March 2, 1903, § 2, requiring brakes to be so coupled as to be under engine control, does not impose on the courts any duty to weigh the dangers incident to particular operations.—United States v. Northern Pac. Ry. Co., U. S. S. C., 41 Sup. Ct. 101.

64. **Sales**—Passing of Title.—The sale and delivery of chattels, on condition that the property is not to vest until the purchase price is paid, does not pass title to the buyer.—Worcester Morris Plan Co. v. Mader, Mass., 128 N. E. 777.

65.——Rescission.—Where the seller, on discovery of fraudulent representations, failed to rescind a sale of powder, but demanded payment, and the buyer, to whom delivery had been made, mortgaged the powder to secure a note, which mortgage and note thereafter were assigned to an innocent third person, who, having also obtained bill of sale, in turn transferred it to defendant, a corporation organized to take over the business of the buyer, held, that the seller could not thereafter rescind and replevin the powder.—Middleton v. McCarthy Hidden Treasure Mining Corporation, Col., 193 Pac. 553.

66. **Seamen**—Seaworthiness.—Inherent in the shipping articles of seamen is the absolute obligation of the owners and operator to see that the vessel was seaworthy; that is, she must be tight, staunch, and strong, and so equipped and the cargo so stored as to resist all ordinary action of the sea. But it is not necessary that she be in perfect condition or equipped with the most improved appliances.—Hamilton v. United States, U. S. C. C. A., 268 Fed. 15.

67. **Statutes**—Ambiguity.—While an act that is too plain to admit of construction must be accepted and enforced by the courts as it was written, the courts will give to a doubtful or ambiguous statute a construction, if possible, which will not lead to inequitable results.—Williamson v. Illinois Cent. R. Co., Ind., 128 N. E. 758.

68.——Taxation.—Laws imposing taxes are not to be construed as imposing burdens upon doubtful interpretations.—Sperry & Hutchinson Co. v. Harbison, Miss., 86 So. 455.

69. **Taxation**—Exactions.—Taxes are, in legal contemplation, neither debts nor contractual obligations, but are, in the strictest sense of the word, exactions.—Baker v. City of East Orange, N. J., 111 Atl. 681.

70. **Telegraphs and Telephones**—Damages.—In the absence of statutory or contractual modification of the liability of a telegraph company, if there is negligent failure to transmit a message correctly, the party in whose favor the liability is incurred is entitled to recover such damages as are the direct and natural result of that breach of duty, including special damages which the terms of the message disclose to be likely to result from the default.—Western Union Telegraph Co. v. Esteve Bros. & Co., U. S. C. C. A., 268 Fed. 22.

71. **Trespass**—Exemplary Damages.—Where land has been invaded in intentional disregard of owner's right and of his warnings not to do so, owner is entitled to exemplary damage.—Stockburger v. Aderholt, Miss., 86 So. 464.

72. **Trial**—Preponderance of Evidence.—An instruction, defining "preponderance of the evidence" as not the greater number of witnesses, but that evidence which was more satisfying and convincing to the minds of the jury, without adding "in respect to its credibility," was not erroneous—Zackwik v Hanover Fire Ins. Co., Mo., 225 S. W. 135.

73. **Trusts**—Devise to Class.—Where all of the living beneficiaries who might take under a devise in trust to a class were made parties to a proceeding to sell for reinvestment, a sale made under judicial decree is binding on any beneficiary who may be added to the class by birth, etc.—Bibb v. Bibb, Ala., 86 So. 376.

74.——Resulting Trust.—A resulting trust in real property arises where an agent invests his principal's money in such property with the latter's consent but takes the title thereto in the agent's name, and the fact that the agent applies the particular money furnished to him for the purchase to his own use, but later substitutes therefor funds of his own, does not alter the rule.—Jackson v. Jackson, Fla., 86 So. 510.

75. **Vendor and Purchaser**—Assignee.—The assignee of an option to purchase land, in the absence of estoppel, takes subject to all the defenses that might be interposed against the assignor, and is not in the position of an innocent purchaser.—Andrews v. Mohrenstecher, Ill., 128 N. E. 729.

76. **Waters and Water Courses**—Act of God. —A railroad company, which filled in a side channel of a river through which it was obvious that the water flowed in time of flood, cannot claim exemption from liability for the flooding of land above because of such obstruction, on the ground that the freshet was so unprecedented as to be an act of God.—Oregon-Washington R. & Nav. Co. v. Williams, U. S. C. C. A., 268 Fed. 56.

77. **Wills**—Revocation.—If a codicil expressly revokes any part of the will, the part revoked must be treated as stricken, and, if any clause of the codicil is irreconcilably repugnant to the provisions of the will, to such extent the codicil supplants the will.—Abdill v. Abdill, Ill., 128 N. E. 741.

78.——Testamentary Capacity.—Less strength of mind is required to make a will than a contract, where the party has to combat the sagacity and cunning of a mind which may be superior.—Langford's Ex'r v. Miles, Ky., 225 S. W. 246.

79.——Testamentary Act.—While the law looks with suspicion on a will, the preparation and execution of which has been attended to by a beneficiary, such a will is not invalid, unless the circumstances convince the court or jury that it was the act of the beneficiary, and not the free and conscious act of the testatrix. —In re Gordon's Will, Del., 111 Atl. 610.

80. **Witnesses**—Competency of Wife.—A wife was incompetent to testify as a witness for her husband for the purpose of contradicting witnesses for the government, who testified that certain matters transpired in her presence, as the rule excluding a wife from testifying for her husband applies, irrespective of the kind of testimony she might give.—Jin Fuey Moy v. United States, U. S. S. C., 41 Sup. Ct. 99.